

ENTERED  
Office of Proceedings

FEB 20 2004

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Public Record

BEFORE THE

**SURFACE TRANSPORTATION BOARD**

Abandonment of a line of Railroad  
Between BNSF M.P. 0.62 and  
M.P. 3.50 near South Hutchinson,  
Reno County, Kansas

NOTICE OF EXEMPTION  
Docket No. AB-6  
(Sub-No. 406X)



210114

TO THE SURFACE TRANSPORTATION BOARD:

The Burlington Northern and Santa Fe Railway (BNSF) hereby notifies the Board that it intends to abandon its line of railroad between BNSF M.P. 0.62 and M.P. 3.50 near South Hutchinson, Reno County, Kansas, a total distance of 2.88 miles, pursuant to the Board's Exemption of Out of Service Rail Lines, 49 C.F.R. § 1152.50 and in support of the Notice, respectfully provides the following information:

**FILED**

FEB 20 2004

**SURFACE  
TRANSPORTATION BOARD**

- I. Proposed consummation date for the abandonment.

April 9, 2004

- II. Certification required in 49 C.F.R. § 1152.50(b)

The attached Certification of Michael Smith certifies that no formal complaint filed by a user of rail service on this line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line is pending with the Board or any U.S. District Court or has been decided in favor of a complainant within the last two years. The attached Verification of Richard A. Batie certifies that no local traffic has moved over this line for at least two (2) years and any overhead traffic on the line can be rerouted over other lines.

- III. Information required by C.F.R. § 1152.22(a)(1-4), (7), (8) and (e)(4).

FILED

FEB 20 2004

TRANSPORTATION BOARD

(a) General

- (1) Exact name of Applicant.

The Burlington Northern and Santa Fe Railway  
Company

- (2) Whether applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, Chapter 105.

Applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, Chapter 105.

- (3) Relief sought.

BNSF seeks an exemption from Surface Transportation Board approval authorizing the abandonment and discontinuance of service of the South Hutchinson, Kansas line specified above.

- (4) Detailed map of the subject line.

See Exhibit A.

- (5) Name, title and address of representative of applicant to whom correspondence should be sent.

Michael Smith  
Freeborn & Peters  
311 S. Wacker Dr., Suite 3000  
Chicago, IL 60606-6677

- (6) List of all United State Postal Service ZIP Codes that the line traverses.

The South Hutchinson, Kansas line traverses United States Postal Service Zip codes 67501 and 67505.

- (7) Statement of whether the properties proposed to be abandoned are suitable for other public purposes, including roads or highways, other forms of mass transportation, conservation, energy production or transmission or recreation. If the applicant is aware of any restriction on the title to the property, including any reversionary interest, which would affect the transfer of title or the use of property for other than rail purposes, this shall be disclosed.

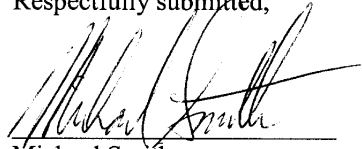
The right of way may be suitable for use for other public purposes such as a trail. On part of the properties involved, title considerations may affect the conveyance of the land for use other than railroad purposes. Based on information in our possession, the line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

IV. Level of protection.

The interest of railroad employees will be protected by the conditions imposed in Oregon Short Line RR Co. - Abandonment - Goshen, 360 I.C.C. 91 (1979)

V. Certification that the notice requirements of §§ 1152.50(d)(1) and 1105.11 have been met is attached.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Smith", written over a horizontal line.

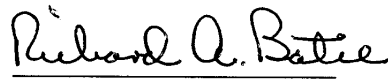
Michael Smith  
Freeborn & Peters  
311 S. Wacker Dr. Suite 3000  
Chicago, Illinois 60606-6677  
Phone: (312) 360-6724  
Fax: (312) 360-6598

Date: February 18, 2004

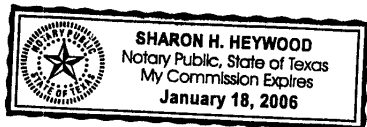
**VERIFICATION**

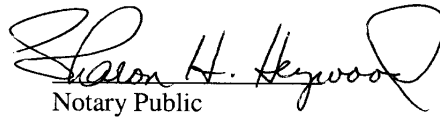
STATE OF TEXAS            )  
                                      )ss  
COUNTY OF TARRANT    )

Richard A. Batie makes oath and says he is Manager, Shortline Development in the Network Development department of The Burlington Northern and Santa Fe Railway Company; that he has been authorized by the Applicant to verify and file with the Surface Transportation Board the foregoing Notice of Exemption in AB-6 (Sub-No. 406X ); that he affirms that the line has had no local traffic in the prior two (2) years and that there is no overhead traffic to be rerouted; that he has carefully examined all of the statements in the Notice; that he has knowledge of the facts and matters relied upon in the Notice; and that all representations set forth therein are true and correct to the best of his knowledge, information, and belief.

  
Richard A. Batie  
Manager, Shortline Development

Subscribed and sworn to before me the 17 day of February 2004.

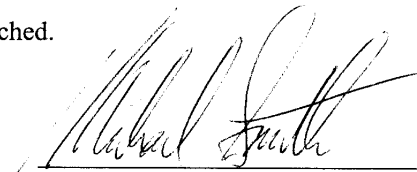


  
Notary Public

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY  
NO. AB-6 (Sub No. 406X )

**CERTIFICATION**

I hereby certify that (1) no formal complaint filed by a user of rail service on this line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line is pending with the Board or any U.S. District Court or has been decided in favor of a complainant within the last two (2) years; (2) service of notice upon the U.S. Department of the Interior, National Park Service, Recreation Park Service, Land Resource Division; the Department of Defense, Military Traffic Management Command; the Kansas Corporation Commission; the Kansas Department of Transportation; and the Chief Forest Service, U.S. Department of Agriculture was accomplished by mailing a copy thereof on January 14, 2004; (3) the environmental and historic reports were serviced upon the agencies identified in 49 C.F.R. § 1105.7(b) and the State Historic Preservation Offices on January 14, 2004; (4) service of notice upon the State Clearinghouses was accomplished by mailing a copy thereof on January 14, 2004; and (5) the publication requirements of 49 C.F.R. § 1105.12 have been complied with, to wit: publication of notice was accomplished on January 17, 2004 in the Hutchinson News, affidavit of publication is attached.



Michael Smith  
Freeborn & Peters  
311 S. Wacker Dr. Suite 3000  
Chicago, Illinois 60606-6677  
Phone: (312) 360-6724  
Fax: (312) 360-6598

Date: February 18, 2004

# CLASSIFIED

Saturday, January 17, 2004 C7

## JURY OF RENO COUNTY, KANSAS COURT DEPARTMENT

Case No. 03 CV 651  
Court No. 1  
K.S.A. Chapter 60

RY, JR.  
OF

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Title to Real Estate  
Involved

OTICE OF SUIT  
TO

/A LARRY DEAN BERRY, JR.  
OF OMAHA

unknown; Tenant/Occupant)  
unknown; Tenant/Occupant)

id/or legal entities who  
d, including the

y defendants, together  
devises,  
administrators,  
servators, assigns,  
s of such defendants.

that a Petition to Foreclose Mortgage was  
Court of Reno County, Kansas, by GMAC  
aying for foreclosure of its mortgage on  
aal property all located in Reno County,

SHUNK'S SECOND ADDITION, to the  
no County, Kansas, according to the  
of.

id to plead to the Petition to Foreclose  
February 16, 2004, in the Court at  
u fail to plead, judgment and decree will  
upon the Petition to Foreclose Mortgage.  
lect a debt and any information obta ned  
se.

DOERING & ASSOCIATES, P.C.  
By: Michael D. Doering KS #13832  
Margaret F. White KS #15500  
4344 Bellevue  
Kansas City, Missouri 64111-3515  
Telephone (816) 531-4949  
Telecopies (816) 531-4449  
Attorney for Plaintiff

5982

PORT OF CLAY TOWNSHIP  
COUNTY, KANSAS  
r and trustee of Clay Township, submit: the  
at ending December 31, 2003.

### ANCIAL REPORT

Total receipts	Total Expenditures	Cash Balance December 31	Unpaid Bills December 31
7,774.46	8,247.70	87.72	26.78
84,538.84	290,879.12	365,418.79	1,527.29
19,432.75	0.00	89,432.75	0.00

availability at the county clerk's office.  
e township has including the checking  
stments.

report is a correct summary of all moneys  
s well as all unpaid bills for the township  
ember 31, 2003.

(s)Charlie Giles  
Township Treasurer

6002

## Farm Equipment 620

TWO 1450 Semi-mount  
five bottom 16in  
JD plows.  
620-585-6761.

TWO CHANNEL two way 25  
watt, 100 VHF, Motorola Radi-  
o mobile radios. Base anten-  
na, phone patch, 50-ft. coaxi-  
al cable. 620-938-1178

## Legal Notice

### NOTICE OF INTENT TO ABANDON

The Burlington Northern and Santa Fe Railway Company gives notice that on or after February 4, 2004, it intends to file with the Surface Transportation Board, Washington, DC 20423, a petition for exemption under 49 U.S.C. 10502(a) and 49 C.F.R. § 11121 et seq., from the requirements of 49 U.S.C. 10903, for abandonment permitting the abandonment of 2.88 miles of railroad line between railroad Milepost 0.62 and Milepost 3.50 near South Hutchinson, Reno County, Kansas, which line segment traverses through United States Postal Zip Codes 67501 and 67505. The proceeding will be docketed as No. AB-6 (Sub No. 406X).

The Board's Section of Environmental Analyses (SEA) will generally prepare an Environmental Assessment (EA), which will normally be available 60 days after the filing of the petition for abandonment exemption. Comments on environmental and energy matters should be filed no later than 30 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Section of Environmental Analysis, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001 or by calling that office at 202-565-1538.

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board's Office of the Secretary, 1925 K Street, N.W., Washington DC 20423-0001 [See 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicants' representative [See 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Public Services at 202-565-1592. Copies of any comments or requests for conditions should be served on the applicant's representative Michael Smith, Freeborn & Peters, 311 S. Wacker Drive, Suite 3000, Chicago, Illinois 60606-6677 - telephone (312) 360-6724.

6001

## Feed/Seed 640

BROME HAY and Mixed  
Grass Hay, round bales with  
net wrap, starting at \$35/ton.  
Can deliver. 620-834-2340 or  
620-489-6497.

CHOICE LARGE round bales  
of Prairie Hay, net wrapped;  
net wrapped Brome Hay round  
bales; \$55 per ton each. Can  
deliver. 620-897-6751.

DAIRY QUALITY ALFALFA,  
Grassy Alfalfa; Alfalfa and  
Wheat; Alfalfa and Oats;  
Sedan. All good quality and  
all tarped. 620-596-2884.

HORSE SMALL square alfalfa  
bales, 1st place Kansas State  
Fair, green and leafy in barn,  
evenings. 620-585-6860

LARGE NET wrapped Alfalfa  
bales, \$65/ton; small square  
Alfalfa bales, tarped, \$3.25  
each. 620-241-8786.

LARGE ROUND BALES  
grass hay, will load.  
620-665-5993

MID SIZED STRAW  
BALES. 620-694-1654

MILO HAY, big round bales,  
net wrapped, no nitrates, no  
rain, excellent quality. Can de-  
liver. 620-297-3343 Murdock.

NET WRAPPED  
Prairie Hay. 170 Bales.  
620-478-2380

PRAIRIE HAY \$35/ton, large  
round bales. 620-532-5341  
or 620-532-3084

PRAIRIE HAY, ALFALFA, round  
bales, 1st/2nd cutting. Gary  
Foster, Abilene, 620-286-5408

SMALL SQUARE Bales of  
Oat Hay. Supreme quality.  
785-798-2681, Ness City, KS.

SMALL SQUARE BROME  
Bales, shedded, no rain,  
\$75/ton or \$2.75/bale, Theod-  
ore J. Regier, 316-799-2470.

## Livestock 650

## Heavy Equipment 680

IHC SCRAPER E-200, ten  
yard paddle, excellent me-  
chanical condition, \$11,000  
or best offer. 620-241-6313

## Game Leases 690

SEE OUR CLASSIFIEDS  
ONLINE AT  
www.hutchnews.com

TWO RESPONSIBLE profes-  
sional individuals would like to  
lease acreage for deer,  
pheasant, duck and geese  
hunting. No acreage too  
small/large. No party hunting.  
Would carry insurance.  
620-665-7219 leave message.

WANTED: CROW HUNTING  
would like to be close to a  
fiyway or roost if possible.  
620-532-5713

**FUR  
RENT**

RENTALS  
800

## Rooms - Furn. 800

ALL BILLS Paid, Cable,  
Phone, Refrigerator \$90.  
per week. 620-662-0268

ALL BILLS PAID, no pets  
private entrance. \$200/\$100.  
620-663-1911 afternoons.

NEW YEAR'S SPECIAL  
Weekly one person, \$100-tax.  
620-662-4429

## Mobile Homes-Rent 810

AAALLL OF our properties are  
at special prices all month

## Apartments - Unfurn.821

404 EAST 10th, #2, CUTE  
one bedroom, appliances,  
\$280 plus lease/deposit. NO  
PETS. Showalter's.  
620-921-0513 or  
620-663-6491

410 EAST Sherman, one bed-  
room. Available now. All bills  
paid. New stove, refrigerator.  
\$275/\$275. 620-664-3109

705 EAST 14th Terrace, two  
bedroom, central heat/air,  
water/mowing paid. \$315.  
663-6002/ 665-6844 evenings.

709 EAST 15th, One bed-  
room, NEW CARPET, appli-  
ances, washer / dryer hook-  
ups, \$340 plus lease/deposit.  
NO PETS. Showalter's.  
620-921-0513 / 620-663-6491

908 EAST 17th, two bedroom,  
central heat/air, \$385/month,  
\$200 deposit. 620-474-0277  
or 620-474-0745.

1218 NORTH Walnut, efficien-  
cy apartment with washer/  
dryer access, appliances, cen-  
tral heat/air, all bills paid, \$350  
rent with deposit. No pets or  
smoking. 620-663-2233.

AAALLL OF our properties are  
at special prices all month  
long and we have more  
properties than anyone in  
town! Three bedrooms, two  
bedrooms, one bedrooms  
and studios. 620-662-4552.

100 South Airport,  
Monday through Friday and  
Now open on Sundays!

ALL BILLS PAID studio apart-  
ments starting at \$200, no  
pets. 620-665-1553.

ALL BILLS PAID, one bed-  
rooms starting at \$240/\$200,  
nice, clean, camera moni-  
tored, Sorry no pets. Leon  
Apartments, Rane Manage-  
ment, 14 East 2nd + 663-3341

BEST VIEWS IN CITY: Plaza  
Towers, quiet, clean, affordable,  
unique, all bills paid, down-  
town convenience, all ages  
welcome, laundry. Sorry no  
pets. 663-3341.

BIG, MUCH NEW, nice, one,  
two bedrooms, \$230, \$300,  
\$325, \$350, all bills paid. 716  
East 4th. 662-8176/ 664-4659.

BRICK TWO bedroom with  
attached garage at 1403 East  
27th, appliances and wash-  
er/dryer hook up. Rent \$25 a  
month with lease and \$300  
deposit. No pets.  
620-662-1054/ 620-727-1517.

## CLEAN/SPACIOUS

One and two bedroom  
apartments starting at \$275  
and \$345 featuring fireplace,  
gourmet kitchen, walk-in clos-  
et, balcony, laundry, 1 1/2 bath  
and more.

★ ★ POOL ★ ★  
NORTH HAMPTON  
707 East 30th  
VILLAGER

12th and Severance  
COUNTRY WOODS

700 West 30th  
RANE MANAGEMENT  
Sorry, No Pets.  
CALL 663-3341

EASTGATE  
VILLAGE  
(North of the Hospital)

STUDIOS  
ONE BEDROOMS  
TWO BEDROOMS  
THREE BEDROOMS

For availability  
Call 663-RENT

## Apartments - Unfurn.821

### LOW UTILITIES

- 2/3 bedrooms
- Washer/Dryer Connections
- Playground
- Storm Shelter
- Gymnasium
- We accept pets
- Club House

1300 East 33rd  
669-0810 EHO

Rent is not based on income,  
income guidelines apply.

NICE REMODELED, two bed-  
room, upstairs, great view  
of Avenue A Park,  
water/trash paid, ready Jan-  
uary 10th, \$375/\$375.  
620-663-4267

ONE AND two bedroom  
apartments that have  
garages, laundry hookups  
central heat. For location  
call Fessler 665-8918 or  
stop by 322 North Main

ONE BEDROOM at 101 East  
13th, large apartment, walkin  
closets, full basement with  
washer/dryer hookups, central  
heat, appliance available by  
request, \$425 with deposit. No  
pets/smoking. 620-663-2233.

ONE BEDROOM, 3110 Plaza  
Way, appliances, central  
heat/air, washer/dryer hook-  
ups, \$310, lease/deposit. No  
pets. Call. 620-727-7423.

ONE BEDROOM, 600 North  
Washington, water and  
trash paid, stove and refrig-  
erator furnished. \$295 rent  
and deposit. 620-662-6370.

ONE BEDROOMS, \$300 And  
\$265. Quiet neighbors. Heat/  
water paid. 316-371-4418

PAY A LITTLE  
LIVE A LOT  
\$438/Month

Large two bedroom  
townhomes with basement  
and washer/dryer hook up.  
Call today, only a few left.  
Commerce Gardens  
1801 Lyman  
663-6291  
Equal Housing Opportunity

RETIREMENT LIVING  
Rent based upon income.  
Mission Place

3101 North Plum, Hutchinson  
Call For an Appointment  
620-662-8731

SPACIOUS ONE Bedroom  
"Loft" style apartment at High-  
lands Golf Course. Views, quiet,  
secure. \$375 + deposit.  
Available February 1st.  
620-664-9798

STUDIOS AND ONE Bed-  
rooms \$240/\$285 + deposit.  
No pets. 620-663-8906

TWO BEDROOM, 1212 North  
Severance, \$265; 510 East  
1st, \$250; One bedroom,  
309 East Sherman, \$215.  
Sorry no pets. Rane Man-  
agement. 620-663-3341.

TWO BEDROOM, 814 - 15th  
Circle, appliances, central  
heat/air, washer/dryer hook-  
ups, \$400, lease/deposit. No  
pets. Call. 620-727-7423.

TWO BEDROOM, small and  
neat, great location, Deposit/  
Reference/Lease. \$400. 110  
East 15th. 662-0489 evenings

## Duplexes 822

227 WEST 12th, Apartment B,  
two bedroom, two bath, very

## Duplexes 822

727 EAST 5th, nice two bed-  
room, washer/dryer hookups,  
garage, air, \$400 rent, deposit  
on installment. 620-662-7762.

1306 EAST 20th: two bed-  
room, one bath, \$500 a  
month, no pets/smoking.  
620-663-6626.

1319B EAST 20th, three bed-  
room, two bath, double gar-  
age, central heat/air, appli-  
ances. \$750/500. 620-960-2510  
620-474-0745.

3102A TULANE, two bed-  
room, garage, \$500/\$200.  
620-474-0745.

805A OLD FARM ESTATES,  
two bedroom, one bath, stove,  
refrigerator, dishwasher, cen-  
tral heat/air, washer/dryer  
hookups, finished basement,  
excellent condition. No Pets/  
Smokers. \$575/\$400 deposit.  
One year lease. By appoint-  
ment only. Great for Seniors.  
620-663-9293

AAALLL OF our properties are  
at special prices all month  
long and we have more  
properties than anyone in  
town! Three bedrooms, two  
bedrooms, one bedrooms  
and studios. 620-662-4552.

100 South Airport,  
Monday through Friday and  
Now open on Sundays!

CLEAN TOWNHOUSE, two  
bedroom, extra room, 1 1/2  
baths, garage, basement,  
227/229 East 17th, \$575.  
620-662-1420

DUPLEX, ONE bedroom,  
great location, washer/dryer  
hookup, HUD accepted. 665-1553

EXTRA NICE, two bedroom,  
\$450 plus utilities. No pets/  
smoking. 620-663-3206.

FOR SALE OR RENT: Owner  
financing one or two bed-  
rooms, \$450 to \$750. 9713 to  
9805 Snokomo. 620-728-9715  
or 620-960-1715.

GREAT HALF DUPLEX! All  
brick, two + bedrooms, full  
finished basement, new car-  
pet, attached garage, won-  
derful location! \$650/month.  
620-474-0115

LARGE DUPLEX, West 24th,  
two bedroom, fireplace, gar-  
age, finished family/TV room,  
no pets. Senior Special.  
620-663-9236.

NICE, ONE Bedroom Duplex,  
\$350. References. 305B West  
18th. No pets. 620-665-0099

ONE BEDROOM, clean, stove,  
refrigerator, \$300/month.  
817 North Maple. 620-728-1874

ONE BEDROOM, very nice,  
appliances, some bills paid,  
\$295/\$200. 620-669-9997.

THREE YEAR OLD DUPLEX,  
in Northwest Hutchinson,  
2500 Kent Place, two bed-  
room, two bath, garage, ap-  
pliances furnished. No Pets.  
\$750. 620-663-7527.

TRI-LEVEL 2806 North  
Washington, two bedrooms,  
two baths, rec/family room, no  
yardwork, no pets, \$550.  
620-665-0444

TWO BEDROOM, all brick,  
nice, garage, central  
heat/air, stove, refrigerator,  
\$550/month 1215 North  
Monroe. 620-728-1874

TWO BEDROOM, appliances,  
washer/dryer hookups, \$375  
plus deposit, one year lease,  
no smoking/pets. 620-663-2233

VERY LARGE DUPLEX-

BEFORE THE  
SURFACE TRANSPORTATION BOARD

In the Matter of The  
Burlington Northern and Santa Fe  
Railway Company Notice of Exemption  
to Abandon Its Line of Railroad  
Between M.P. 0.62 and M.P. 3.50  
in South Hutchinson, Kansas

Docket No. AB-6  
(Sub No. 406X)

**ENVIRONMENTAL REPORT**

The following information is submitted to the Surface Transportation Board by The Burlington Northern and Santa Fe Railway Company (BNSF) in accordance with the Board's reporting requirements as set forth in 49 C.F.R. § 1105.7 for the purpose of assisting the Board's preparation of an environmental document regarding BNSF's Notice of Exemption for abandonment of its line between M.P. 0.62 and M.P. 3.50 in South Hutchinson, Reno County, Kansas, total distance of 2.88 miles.

**(1) Proposed action and Alternatives:** Describe the proposed action, including commodities transported, the planned disposition (if any) of any railline and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

BNSF seeks to abandon and discontinue service of the line. A map of the line is attached as Exhibit A.

**(2) Transportation system:** Describe the effect of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

The proposed abandonment will have no affect on existing transportation systems or patterns as the line is out of service.



**(3) Land Use:**

(i) Based on consultation with local and/or regional planning agencies and/or review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

BNSF believes that the proposed exemption will not be inconsistent with local or regional land use plans. The Reno County Board of Commissioners were notified by letter dated August 5, 2003. See Exhibit B, letter to the Board of Commissioners, Reno County, Kansas. As of the date of this report, the Board of Commissioners has not responded. BNSF will provide the Board copies of any response it may receive.

(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agriculture land.

The proposed exemption should have no effect on prime farmland. See Exhibit C, letter from the Natural Resources Conservation Service.

(iii) If any action affects land or water uses within a designated coastal zone, include the coastal zone information required by § 1105.9

N/A

(iv) If the proposed action is abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. § 10906 and explain why.

The Reno County Board of Commissioners was notified by letter dated August 5, 2003. See Exhibit B, letter to the Board of Commissioners, Reno County, Kansas. As of the date of this report, the Board of Commissioners has not responded. BNSF will provide the Board copies of any response it may receive. The city of South Hutchinson,

Kansas has expressed interest in acquiring the right of way for a recreational trail.

**(4) Energy:**

(i) Describe the effect of the proposed action on transportation of energy.

To the best of BNSF's knowledge there are no undeveloped energy resources such as oil, natural gas or coal in the vicinity of this line.

(ii) Describe the effect of the proposed action on recyclable commodities.

This abandonment and discontinuance will not adversely affect movement or recovery of recyclable commodities as the line is out of service.

(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.

This abandonment will not result in an increase or decrease in overall energy efficiency as the line is out of service.

(iv) If the proposed action will cause diversions from rail to motor carriage of more than:

(A) 1,000 rail carloads a year, or

(B) An average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in the energy consumption and show the data and methodology used to arrive at the figure given.

There will be no diversions of traffic because the line is out of service.

**(5) Air:**

(i) If the proposed action will result in either:

(A). An increase in rail traffic of at least 100% (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of the line effected by the proposed, or

No.

(B). An increase in rail yard activity of at least 100% (measured by carload activity), or

No.

(C). An average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions.

The action will not involve an increase in truck traffic of more than 10% or 50 vehicles a day on any affected road segment as the line is out of service.

(ii) If the proposed action affects a Class I or nonattainment area under the Clean Air Act, and will result in either:

(A) An increase in rail traffic of at least 50% (measured in gross ton miles annually) or an increase of at least three train a day on any segment of rail line, or

(B) An increase in rail yard activity of at least 20% (measured by carload activity), or

(C) An average increase in truck traffic or more than 10-% of the average daily traffic of 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by State implementation Plan. However, for a rail construction under 49 U.S.C. § 10901 (or 49 U.S.C. § 10505) or in a case involving the reinstitution of service over a previously abandoned line, only the three train a day threshold in this item shall apply.

The proposed abandonment will not result in an increase of rail or truck traffic because the line is out of service.

(iii) If the transportation of ozone depleting materials (such as nitrogen oxide and from) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

The proposed abandonment will not result in an increase of rail or truck traffic because the line is out of service.

**(6) Noise:** If any of the thresholds identified in item (5)(c) of this section are surpassed, state whether the proposed action will cause:

(i) An incremental increase in noise levels of three decibels Ldn or more,

N/A

(ii) An increase to a noise level of 76 decibels Ldn or greater. If so, identify sensitive receptors (e.g. schools, libraries, hospitals, residences, retirement communities and nursing homes) in the project area and quantify the noise increase for those receptors if the thresholds are surpassed.

N/A

**(7) Safety:**

(i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad crossings).

This abandonment should have no adverse effect on health or public safety. There are 2 public crossings and 2 private crossings. During salvage operations on the line, if any may be required, precautions will be taken to ensure public safety, and contractors will be required to satisfy all applicable health and safety laws and regulations.

(ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the

extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills, and the likelihood of and accidental release of hazardous materials.

Abandonment will not result in transportation of hazardous materials.

(iii) If there are any known hazardous waste site or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

There is no evidence of known hazardous waste site or sites where there have been known hazardous materials spills on the right of way.

**(8) Biological resources:**

(i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.

The proposed abandonment will have no adverse impacts to fish and wildlife resources, including threatened and endangered species. See Exhibit D, letter from the U.S. Fish and Wildlife Service. The proposed abandonment will have no significant impacts to crucial wildlife habitats or any currently listed threatened or endangered species in need of conservation. See Exhibit E, letter from Kansas Department of Wildlife and Parks.

(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

The project will not impact any public recreational areas. See Exhibit E, letter from the Kansas Department of Wildlife and Parks. There are no Federal lands administered by the Bureau of Land

Management along the proposed abandonment. See Exhibit F, letter from the Bureau of Land Management.

**(9) Water:**

(i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.

BNSF believes that the proposed exemption will be consistent with applicable Federal, State or local water quality standards. The Kansas Department of Health and Environment was notified by letter dated August 5, 2003. See Exhibit G As of the date of this report, the Kansas Department of Health and Environment has not responded. BNSF will provide the Board copies of any response it may receive.

(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under Section 404 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action and whether any designated wetlands or 100-year floodplains will be affected. Describe the effects.

Permits under 404 of the Clean Water Act are not required for the proposed exemption. See Exhibit H, letter from the Army Corps of Engineers. The proposed exemption will not affect the 100-year floodplain. See Exhibit I, letter from the Reno County Emergency Management.

(iii) State whether permits under Section 402 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action. (Applicants should contact the U.S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required.

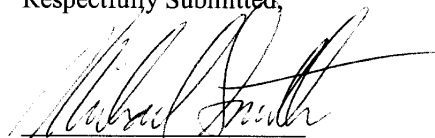
BNSF believes that permits under 402 of the Clean Water Act are not required for the proposed exemption. The Kansas Department of Health and Environment was notified by letter dated August 5, 2003. See

Exhibit G. As of the date of this report, the Kansas Department of Health and Environment has not responded. BNSF will provide the Board copies of any response it may receive.

**(10) Proposed Mitigation:** Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

Any salvage operations that may result will be in accordance with BNSF's general practice of requiring its private contractors to comply with all federal, state and local laws and regulations pertaining to the environment, including, but not limited to noise, air quality, water quality, and items of archaeological significance. The project itself should mitigate the environmental effects of reinstating active rail operations.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael Smith", is written over a horizontal line.

Michael Smith  
Freeborn & Peters  
311 S. Wacker Dr. Suite 3000  
Chicago, Illinois 60606-6677  
Phone: (312) 360-6724  
Fax: (312) 360-6598

Date: February 18, 2004

BEFORE THE  
SURFACE TRANSPORTATION BOARD

In the Matter of The  
Burlington Northern and Santa Fe  
Railway Company Notice of Exemption  
to Abandon Its Line of Railroad  
Between M.P. 0.62 and M.P. 3.50  
in South Hutchinson, Kansas

Docket No. AB-6  
(Sub No. 406X)

**HISTORICAL REPORT**

The following is submitted to the Surface Transportation Board by The  
Burlington Northern and Santa Fe Railway Company (BNSF) in accordance with the  
Board's reporting requirements set forth in 49 C.F.R. § 1105.8 for the purpose of assisting  
the Board's environmental and historical assessment regarding BNSF's Notice of  
Exemption to abandon its line of railroad between M.P. 0.62 in to M.P. 3.50 near South  
Hutchinson, Kansas a total distance of 2.88 miles.

(1) A U.S.G.S. topographic map (or alternate map drawn to scale and sufficiently  
detailed to show buildings and other structures in the vicinity of the proposed action)  
showing the location of the proposed action, and the locations and approximate  
dimensions of the railroad structures that are 50 years old or older and are part of the  
proposed action;

One copy of a U.S.G.S. Topographical map has been provided to the Kansas State  
Historical Society and one copy is being provided to the Surface Transportation Board's  
Section of the Environmental Analysis upon filing of this Report.

(2) A written description of the right-of-way (including approximate widths, to  
the extent known) and the topography and urban and/or rural characteristics of the  
surrounding area:



The South Hutchinson, Kansas Trackage is located adjacent and southwest of the town of South Hutchinson, a suburb of Hutchinson, Kansas. Hutchinson has a population of 40,787 and South Hutchinson has a population of 2,539. The land adjoining the right of way is generally flat with rural and suburban uses. The right of way is 100 feet wide.

(3) Good quality photographs (actual photographic prints, not photocopies) of railroad structures on the property that are 50 years old or older and of the immediately surrounding area;

There are no bridges that are 50 years or older in the immediate area of the abandonment.

(4) The date(s) of construction of the structures, and the date(s) and extent of any major alterations, to the extent such information is known;

N/A

(5) A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action:

The right of way was acquired by the Hutchinson & Southern Railway Company (H&S) between 1896 and 1899. The H&S was a predecessor to The Atchison Topeka and Santa Fe Railway Company (ATSF). In 1995 the ATSF merged with the Burlington Northern Railroad (BN) in 1995 to become The Burlington Northern and Santa Fe Railway Company (BNSF).

(6) A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is to be historic;

Documents in BNSF's possession concerning this abandonment may include alignment maps showing the right-of-way and/or station maps. Such documents are too

large for practical reproduction in this report, but can be furnished upon request, if they are available.

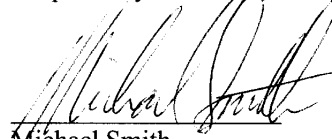
(7) An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 C.F.R. § 60.4), and whether there is a likelihood of archaeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities);

To the best of BNSF's knowledge, the proposed abandonment should have no appreciable effects on any known sites or properties listed, or eligible for listing in the National Register of Historic Places. The proposed abandonment should have no effects on any property listed on the National Register of Historic Places or otherwise identified in the files of the Kansas State Historical Society as having historical significance. See Exhibit J, letter from the Kansas State Historical Society.

(8) A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archaeological recovery of resources (such as swampy conditions or the presence of toxic wastes), and the surrounding terrain.

BNSF is not aware of any known prior subsurface ground disturbance or fill or any other environmental conditions (naturally occurring or man-made) that might affect the recovery of archaeological resources.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Smith", written over a horizontal line.

Michael Smith

Freeborn & Peters

311 S. Wacker Dr. Suite 3000

Chicago, Illinois 60606-6677

Phone: (312) 360-6724

Fax: (312) 360-6598

Date: February 18, 2004

**CERTIFICATION PURSUANT TO 49 C.F.R.1105.7(c)**

The Burlington Northern and Santa Fe Railway Company ("BNSF") by and through its authorized representative, Michael Smith, certifies that on January 14, 2004, BNSF sent copies of the foregoing Environmental and Historical Reports by first class mail to the following agencies:

Ms. Victoria Rutson  
Chief, SEA  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423-0001

Richard Pankratz  
Director of Historic Preservation  
6425 SW Sixth Avenue  
Topeka, Kansas 66615-1109

Timothy Spisak  
Amarillo Field Manager  
Bureau of Land Management  
Amarillo Field Office  
801 S. Filmore Street, Suite 500  
Amarillo, TX 79191

Bryan Simmons  
Aquatic/Terrestrial Ecologist  
Environmental Services Section  
Kansas Department of Wildlife & Parks  
512 SE 25<sup>th</sup> Avenue  
Pratt, KS 67124

U.S. Fish & Wildlife Services  
Region 6  
P.O. Box 25486  
Denver, CO 800025

Karl Mueldener, Director  
Kansas Department of Health and  
Environment  
Division of Environment  
Bureau of Water  
1000 SW Jackson St., Suite 420  
Topeka, KS 66612-1367

Reno County Commission  
206 West First Street  
County Courthouse  
Hutchinson, KS 67501-5204

William Guy  
Reno County Emergency Management  
206 W. 1st Ave.  
Hutchinson, KS, 67501

Sarah Reznicek  
Regulatory Specialist  
U.S. Army Corps of Engineers  
Kansas State Regulatory Office  
2710 NE Shady Creek Accs. Rd.  
El Dorado, Kansas 67042

William Gill  
Kansas Field Supervisor  
U.S. Fish and Wildlife Service  
Kansas Field Office  
315 Houston Street, Suite E  
Manhattan, KS 66502

Natural Resources Conservation Service  
South Hutchinson Service Center  
18 East 7th Street  
South Hutchinson, KS 67505

Tomas Dominguez  
State Conservationist  
Kansas Natural Resources Conservation  
Service  
760 S. Broadway  
Salina, Kansas 67401 - 4642

Kansas Department of Transportation  
915 Harrison, Room 754  
Docking State Office Building  
Topeka, KS 66612-1568

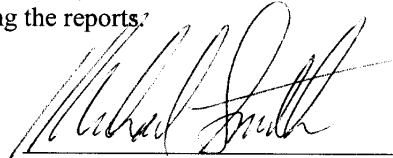
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, KS 66604-2425

U.S. Environmental Protection Agency  
Region 7  
901 North 5<sup>th</sup> St.  
Kansas City, KS 66101

U.S. Department of the Interior  
National Park Service  
Land Resource Division  
1849 C Street, N.W.  
Washington, DC 20240

Edward McKay  
National Geodetic Survey  
NOAA - SSMC3  
1315 East-West Highway  
Silver Spring, MD 20914

The required cover letters (pursuant to 49 C.F.R. 1105.11) are attached hereto. BNSF has consulted with all appropriate agencies in preparing the reports.

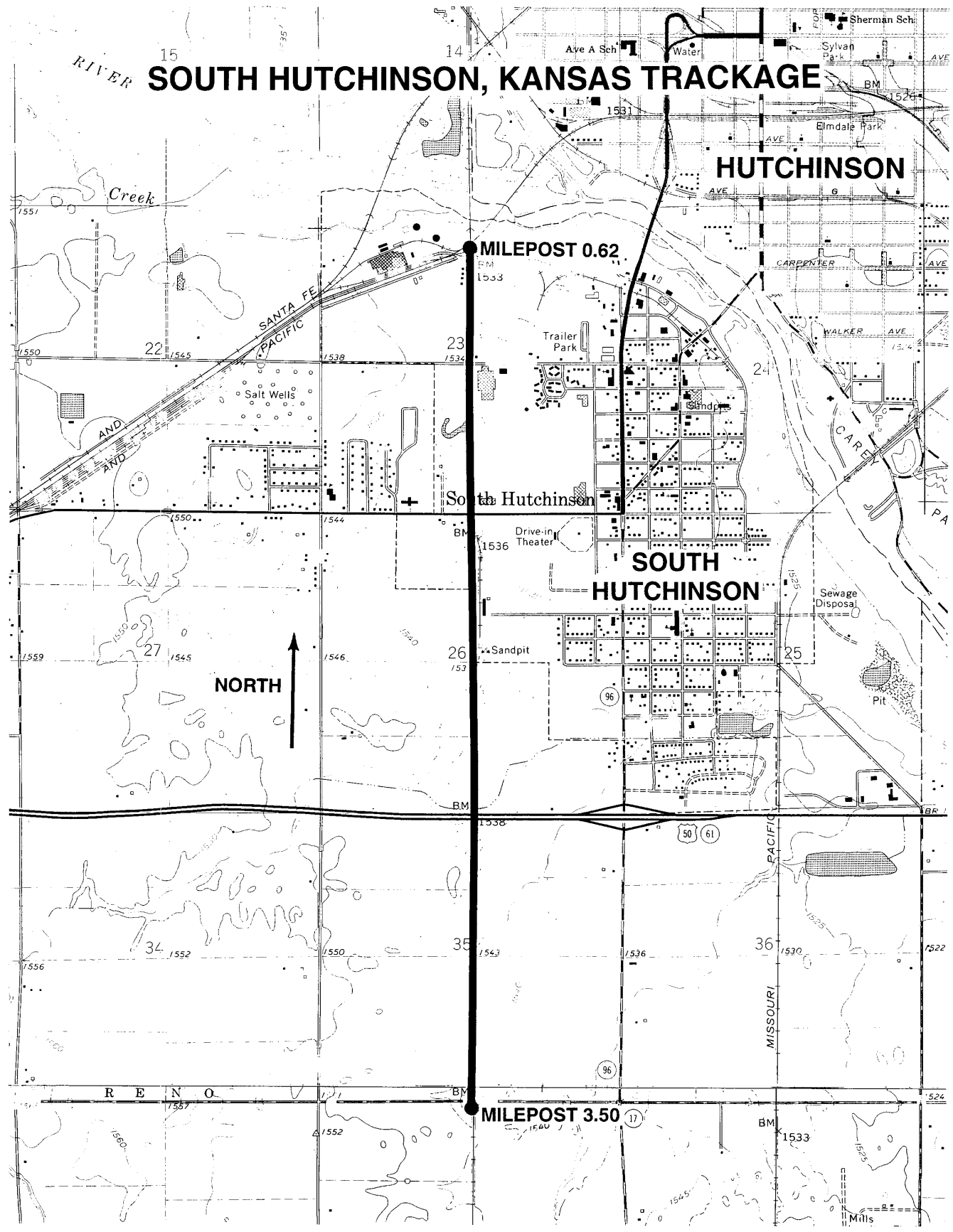


Michael Smith  
Freeborn & Peters  
311 S. Wacker Dr. Suite 3000  
Chicago, Illinois 60606-6677  
Phone: (312) 360-6724  
Fax: (312) 360-6598

Date: February 18, 2004

**A**

# SOUTH HUTCHINSON, KANSAS TRACKAGE



MILEPOST 0.62

SOUTH HUTCHINSON

MILEPOST 3.50

**B**



Freeborn & Peters LLP

August 5, 2003

Reno County Commission  
206 West First Street  
County Courthouse  
Hutchinson, Kansas 67501-5204

*Attorneys at Law*

311 South Wacker Drive  
Suite 3000  
Chicago, Illinois  
60606-6677  
Tel 312.360.6000

Brian Nettles  
Paralegal  
Direct 312.360.6336  
Fax 312.360.6596  
bnettl@  
freebornpeters.com

**Re:   *The Burlington Northern and Santa Fe Railway Company Abandonment  
of South Hutchinson, Kansas***

Dear Sir or Madam:

BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 2.88 miles of railroad line between Milepost 0.62 and Milepost 3.50 near South Hutchinson, Kansas.

As part of the environmental report BNSF needs to know whether or not the proposed action is consistent with local land use plans and if there are any alternate public uses for the corridor such as a recreational trail.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact.

For your reference I have enclosed a map of the above referenced railroad line. Please provide this information by September 5, 2003. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.

Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

/bn  
Enclosure

*Chicago*

*Springfield*

C



**United States Department of Agriculture  
Natural Resources Conservation Service**

9 West 28th  
Hutchinson, KS 67502-3453

Phone: 620-663-3501  
FAX: 620-663-3866  
[www.ks.nrcs.usda.gov](http://www.ks.nrcs.usda.gov)

January 28, 2004

Mr. Michael Smith  
Freeborn & Peters  
311 S. Wacker Dr.  
Suite 3000  
Chicago, Ill 60606-6677

Dear Mr. Smith:

Thank you for the opportunity to review the proposed plans of the Burling Northern and Santa Fe Railway Company to abandon approximately 2.88 miles of railroad between M.P. 0.62 and M.P. 3.50 located in Reno County, Kansas.

The proposed project should have no effect on prime farmland. There are no other negative effects for which the Natural Resources Conservation Service is responsible for evaluating as defined by the Farmland Protection Policy Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Jess F. Crockford", is written over the typed name.

JESS F. CROCKFORD  
Assistant State Conservationist

cc:

Harold L. Klaege, State Conservationist, NRCS, Salina, Kansas  
Rodney D. Egbarts, Soil Conservationist, NRCS, Salina, Kansas  
Robert C. Wimer, District Conservationist, NRCS, South Hutchinson, Kansas

**D**



## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

Kansas Field Office  
315 Houston Street, Suite E  
Manhattan, Kansas 66502-6172

September 2, 2003

Brian Nettles  
Freeborn & Peters LLP  
311 South Wacker Drive  
Suite 3000  
Chicago, Illinois 60606-6677

RE: South Hutchinson, Kansas

Dear Mr. Nettles:

This is in response to your letter of August 5, 2003, describing a Burlington Northern and Santa Fe Railway Company proposed abandonment of 2.88 miles of existing railway line near South Hutchinson, in Reno County, Kansas. We have reviewed this proposal and conclude that there should be no adverse impacts to fish and wildlife resources, including threatened and endangered species. Therefore, the U.S. Fish and Wildlife Service has no objection to this proposal as planned.

The Service encourages the Burlington Northern and Santa Fe Railway Company to keep the right-of-way in a natural condition for the benefit of native wildlife, plants, and the public. You may wish to contact the National Park Service, Omaha, Nebraska, 402-221-3350, for more information on the "Rails to Trails" Program. You may also wish to contact the Kansas Department of Wildlife and Parks in Pratt, Kansas (316-672-5911) to determine their interest in acquiring a nature trail.

Thank you for this opportunity to comment on the proposal.

Sincerely,

William H. Gill  
Field Supervisor

cc: KDWP, Pratt, KS (Environmental Services)

WHG/dwm

E

# KANSAS

DEPARTMENT OF WILDLIFE AND PARKS

KATHLEEN SEBELIUS, GOVERNOR

September 2, 2003

Mr. Brian Nettles  
Freeborn and Peters LLP  
311 South Wacker Drive  
Suite 3000  
Chicago, Illinois 60606-6677

Ref: D2.0401  
Reno  
Milepost / 0.62-3.50  
Track: 20030472

Dear Mr. Nettles:

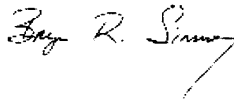
We have reviewed preliminary railway abandonment of the Burlington Northern Santa Fe Railway Company involving 2.88 miles between Milepost 0.62 and 3.50 in South Hutchinson, Reno County, Kansas. The project was reviewed for potential impacts on crucial wildlife habitats, current state-listed threatened and endangered species and species in need of conservation and public recreation areas for which this agency has some administrative authority.

We have no objections to this project as it is currently designed. We would only recommend to minimize any existing instream construction activities while implementing standard erosion control BMP's, temporary weed-free seeding/mulching to protect water quality during construction, and the use of native grasses and forbs to permanently revegetate any and all areas disturbed by abandonment activities.

Results of our review indicate there will be no significant impacts to crucial wildlife habitats; therefore, no special mitigation measures are recommended. The project will not impact any public recreational areas, nor could we document any potential impacts to currently listed threatened or endangered species or species in need of conservation. No Department of Wildlife and Parks permits or special authorizations will be needed if construction is started within one year, and no design changes are made in the project plans. Since the Department's recreational land obligations and the State's species listings periodically change, if construction has not started within one year of this date, or if design changes are made in the project plans, the project sponsor must contact this office to verify continued applicability of this assessment report. For our purposes, we consider construction started when advertisements for bids are distributed.

Thank you for the opportunity to provide these comments and recommendations.

Sincerely,



Bryan R. Simmons,  
Aquatic / Terrestrial Ecologist  
Environmental Services Section

Pratt Operations Office

512 SE 25<sup>th</sup> Ave., Pratt, KS 67124-8174  
Phone 620-672-5911 Fax 620-672-6020 [www.kdwp.state.ks.us](http://www.kdwp.state.ks.us)



F



IN REPLY REFER TO:  
2800 (NM0930) P

## United States Department of the Interior

### BUREAU OF LAND MANAGEMENT

Amarillo Field Office - Helium Operations

801 South Fillmore, Suite 500

Amarillo, Texas 79101-3545

[www.nm.blm.gov](http://www.nm.blm.gov)

August 11, 2003

Mr. Brian Nettles  
Freeborn and Peters  
311 South Wacker Drive  
Chicago, IL 60606-6677

Dear Mr. Nettles:

With regards to the BNSF's plans to file an exemption to abandon its line of railroad near Hutchinson, Kansas (between milepost 0.62 and milepost 3.50), the Bureau of Land Management has no public lands or minerals that would be impacted.

Sincerely,

Timothy R. Spisak  
Amarillo Field Office Manager

G

Freeborn & Peters LLP

August 5, 2003

Karl Mueldener, Director  
Kansas Department of Health and  
Environment  
Division of Environment  
Bureau of Water  
1000 SW Jackson St., Suite 420  
Topeka, KS 66612-1367

*Attorneys at Law*

311 South Wacker Drive  
Suite 3000  
Chicago, Illinois  
60606-6677  
Tel 312.360.6000

Brian Nettles  
Paralegal  
Direct 312.360.6336  
Fax 312.360.6596  
bnettl@  
freebornpeters.com

**Re:   *The Burlington Northern and Santa Fe Railway Company Abandonment  
of South Hutchinson, Kansas***

Dear Mr. Mueldener:

BNSF plans on filing with the Surface Transportation Board ("STB") a Notice of Exemption seeking authority to abandon 2.88 miles of railroad line between Milepost 0.62 and Milepost 3.50 near South Hutchinson, Kansas.

As part of the environmental report BNSF needs to know whether or not this action will be consistent, with Federal, State or local water quality standards. Also, please state whether or not Section 402 and/or NPDES permits are required as a result of the proposed abandonment.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact. No placement of dredge or fill material in any inland waterways is anticipated to result from abandonment and/or salvage.

For your reference I have enclosed a map of the above referenced railroad line. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.

Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

*Chicago*

*Springfield*

H



**DEPARTMENT OF THE ARMY**  
**KANSAS CITY DISTRICT, CORPS OF ENGINEERS**  
**STATE REGULATORY PROGRAM OFFICE - KANSAS**  
**2710 N.E. SHADY CREEK ACCESS ROAD**  
**EL DORADO, KANSAS 67042**

REPLY TO  
ATTENTION OF:

August 21, 2003

Kansas State Regulatory Office  
(200302158)  
(Reno, KS, NPR)

Mr. Brian Nettles  
Freeborn & Peters  
311 South Wacker Drive, Suite 3000  
Chicago, Illinois 60606-6677

Dear Mr. Nettles:

This is in response to your letter received on August 11, 2003, requesting a Department of the Army (DA) permit determination concerning the abandonment of 2.88 miles of BNSF railroad line. The project will cross over an unnamed tributary to Sand Creek; however, your letter stated that there will not be a discharge of dredge or fill material into jurisdictional waters of the U.S., including wetlands. The project is located in Sections 23, 26, and 35, all in Township 23 south, Range 6 west, Reno County, Kansas.

The Corps of Engineers has jurisdiction over all waters of the United States. Discharges of dredged or fill material in waters of the United States, including wetlands, require prior authorization from the Corps under Section 404 of the Clean Water Act (33 USC 1344). The implementing regulation for this Act is found at 33 CFR 320-330.

The enclosed Jurisdictional Determination (JD) form describes the extent of waters of the United States on the project site. Also, the enclosed Notification of Administrative Appeal Options and Process and Request for Appeal form (FORM) describes your options in Section E of the FORM.

We have reviewed the information furnished and have determined that the proposed activity will not involve the discharge of dredged or fill material in waters of the United States. Therefore, Department of the Army permit authorization is not required. Other Federal, state and/or local permits may be required, however, and you should verify this yourself.

Ms. Sarah M. Reznicek, Regulatory Specialist, reviewed the information furnished and made this determination. If you have any questions concerning this matter, please feel free to contact Ms. Reznicek at 316-322-8247 (FAX 316-322-8259).

Enclosures

Copies Furnished:

Environmental Protection Agency, Water Resources Protection Branch wo/enclosure  
Kansas Department of Wildlife and Parks wo/enclosure  
Kansas Department of Agriculture wo/enclosure

**JURISDICTIONAL DETERMINATION**  
U.S. Army Corps of Engineers, Kansas City District

APPLICANT: Burlington Northern And Santa Fe Railway Company NUMBER: 200302158

LOCATION/WATERWAY: Unnamed tributary to Sand Creek/ S23 26 35 T23S R6W

PROJECT REVIEW COMPLETED: ☒ Office ☐ Field

**JURISDICTIONAL DETERMINATION (JD) (For sites regulated under 33 CFR 320-330):**

- ☒ Preliminary JD – Based on available information, there appear *to be* waters of the U.S. on the project site. A preliminary JD is not appealable.
- ☐ Approved JD – There *are* waters of the United States on the project site, as identified in the basis of jurisdiction determination indicated below. An approved JD is an appealable action (33 CFR 331). (Note: JDs prepared by the U.S. Environmental Protection Agency are not appealable to the Corps of Engineers.)

**BASIS FOR JURISDICTIONAL DETERMINATION:**

**Waters defined under 33CFR 328.3(a) as “waters of the United States:”**

- ☐ (1) The presence of waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
- ☐ (2) The presence of interstate waters including interstate wetlands<sup>1</sup>.
- ☐ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could effect interstate commerce including any such waters:
- ☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.
- ☐ (4) Impoundments of waters defined as a Water of the U.S.
- ☒ (5) The presence of a tributary to a water identified in (1) – (4) above.
- ☐ (6) The presence of territorial seas.
- ☐ (7) The presence of wetlands adjacent<sup>2</sup> to interstate or other waters of the U.S., except for those wetlands adjacent to other wetlands.

**Waters defined under 33CFR 329 as “navigable waters of the United States:”**

- ☐ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

**Rationale for Basis (Applies to any boxes checked above):** Sand Creek is a tributary to the Arkansas River; however there will not be a discharge of dredge or fill material into any jurisdictional waters of the U.S., including wetlands.

**Lateral Extent of Jurisdiction (33 CFR 328 and 329):**

- |  |  |
|--|--|
| <p><input type="checkbox"/> Ordinary High Water Mark indicated by:</p> <ul style="list-style-type: none"><li><input type="checkbox"/> clear, natural line impressed on the bank</li><li><input type="checkbox"/> the presence of litter and debris</li><li><input type="checkbox"/> changes in the character of soil</li><li><input type="checkbox"/> destruction of terrestrial vegetation</li><li><input type="checkbox"/> shelving</li><li><input type="checkbox"/> other (hydrologic study, etc.): _____</li></ul> | <p><input type="checkbox"/> High Tide Line indicated by:</p> <ul style="list-style-type: none"><li><input type="checkbox"/> oil or scum line along shore objects</li><li><input type="checkbox"/> fine shell or debris deposits (foreshore)</li><li><input type="checkbox"/> physical markings/characteristics</li><li><input type="checkbox"/> tide gages</li><li><input type="checkbox"/> other: _____</li></ul> |
|--|--|
- ☐ Mean High Water Mark indicated by:
- ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in vegetation types
- ☐ In ocean or coastal area, site is in a zone three geographic (nautical) miles seaward of the baseline<sup>3</sup>
- ☐ Wetland, as shown on the attached wetland delineation map, and/or in a jurisdictional report prepared by \_\_\_\_\_, and dated \_\_\_\_\_.
- ☐ Additional supporting information attached and/or multiple JD forms completed for sites with multiple water categories.

Preparer: Regulatory Specialist, Sarah Reznicek Date: 21 August 2003

<sup>1</sup> Wetlands are identified and delineated using the methods and criteria established in the 1987 Corps of Engineers Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

<sup>2</sup> The term “adjacent” means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

<sup>3</sup> Baseline is the line on the shore reached by the ordinary low tides from which the distance of three miles is measured.

## NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Burlington Northern and Santa Fe R.R.		File Number: 200302158	Date: 21 Aug 2003
Attached is:		See Section below	
	A. INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A	
	B. PROFFERED PERMIT (Standard Permit or Letter of Permission)	B	
	C. PERMIT DENIAL	C	
	D. APPROVED JURISDICTIONAL DETERMINATION	D	
X	E. PRELIMINARY JURISDICTIONAL DETERMINATION	E	

**SECTION I -** The following identifies your rights and options regarding a modification, reconsideration, or administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

**A: INITIAL PROFFERED PERMIT:** You may accept or request modification of the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **REQUEST MODIFICATION:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the District Engineer. Your objections must be received by the District Engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the District Engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the District Engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept the approved JD, appeal the approved JD, or submit new information and request reconsideration of the approved JD.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.
- **RECONSIDERATION BASED ON NEW INFORMATION:** You may submit new information to the District Engineer for reconsideration of an approved JD. You must submit the information within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.



**SECTION II** –Fill out this section and return this form to the appropriate office only if submitting a request for modification or reconsideration to the District Engineer, or if submitting a request for Administrative Appeal to the Division Engineer. All such submittals must be made within 60 days of the date of this notice.

Submit the following requests to the District Engineer

- A. Modification of an INITIAL PROFFERED PERMIT (Item A).
- D. Reconsideration of an APPROVED JURISDICTIONAL DETERMINATION based on NEW INFORMATION (Item D RECONSIDERATION).

Submit the following requests to the Division Engineer

- B. Administrative Appeal of a PROFFERED PERMIT (Item B).
- C. Administrative Appeal of a PERMIT DENIAL (Item C).
- D. Administrative Appeal of an APPROVED JURISDICTIONAL DETERMINATION (Item D APPEAL) (for reasons other than reconsideration of an approved JD based on new information).

(Note: Preliminary Jurisdictional Determinations (Item E) are not appealable. If you have concerns regarding a preliminary Jurisdictional Determination, you can request an approved Jurisdictional Determination).

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**SUBMITTAL OF NEW OR ADDITIONAL INFORMATION:** The District Engineer may accept and consider new information if you request a modification to an initial proffered permit (Part A), or a reconsideration of an approved JD (Part D). An administrative appeal to the Division Engineer is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the administrative record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:

**DISTRICT ENGINEER**  
**Attn: Joseph Hughes**  
**Chief Regulatory Branch**  
**U.S. Army Engineer District, Kansas City**  
**601 East 12<sup>th</sup> Street, Room 706**  
**Kansas City, MO 64106-2896**  
**Telephone: 816-983-3990**

(Use this address for submittals to the District Engineer)

If you wish to submit an appeal or have questions regarding the appeal process you may contact:

**DIVISION ENGINEER**  
**Attn: Mores V. Bergman**  
**Appeal Review Officer**  
**U.S. Army Engineer Division, Northwestern Division**  
**12565 West Center Road**  
**Omaha, NE 68144-3869**  
**Telephone: 402-697-2533**

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

\_\_\_\_\_  
Signature of appellant or agent.

Date:

Telephone number:





**Emergency Management  
Fire Service Administration**

**RENO COUNTY**  
206 West First Ave  
Hutchinson, Kansas 67501  
(620) 694-2974- Fax (620) 694-2794  
TDD: Kansas Relay 1-800-766-3777

August 19, 2003

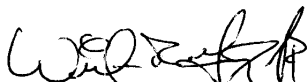
Freeborn & Peters LLP  
311 S. Wacker Drive  
Suite 3000  
Chicago, Illinois 60606-6677  
Attn: Brian Nettles

Dear Brian

In reference to your letter dated August 5, 2003, subject Burlington Northern and Santa Fe Railway Abandonment. I have talked with the Planning Zoning and Utilities Director, David McComb, The County Engineer, Flood Plain Manager, Dean Chesnut and neither one have a concern about the flood plain issue. Mr. Chesnut did express a concern on any structures along this stretch of track that may need to be removed. His concern is that of debris getting caught up on the structure and causing problems. He requests that any structure along this route also be removed. Mr. Chesnut has also been in contact with the City of South Hutchinson and they have no other problems with this issue.

If you have any questions please feel free to contact me at the above listed address or phone number.

Sincerely,

  
William R. Guy Jr., KCEM  
Director

J

# KANSAS

KSR&C No. 03-12-050

Kansas State Historical Society  
Dick Pankratz, Director, Cultural Resources Division

KATHLEEN SEBELIUS, GOVERNOR

December 15, 2003

Brian Nettles  
Freeborn & Peters LLP  
311 S Wacker Dr Ste 3000  
Chicago IL 60606-6677

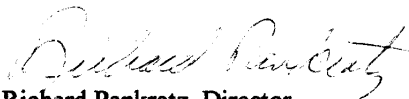
Re: Abandon BNSF Track Between Milepost 0.62 and Milepost 3.50, South Hutchinson  
Reno County

Dear Mr. Nettles:

We have reviewed the project identified above and have determined that it should not affect any property listed on the National Register of Historic Places or otherwise identified in our files as having historical significance. This office has no objection to implementation of the project.

Sincerely yours,

Mary R. Allman  
State Historic Preservation Officer



Richard Pankratz, Director  
Cultural Resources Division

clg